

BERRY.TXT

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3 WAYNE BERRY, a Hawaii) CIVIL NO. CV03-00385 SOM-LEK
4 citizen) (Copyright)
5 Plaintiff,)
6 vs.)
7 HAWAIIAN EXPRESS)
8 SERVICE, INC, et al.,)
)
9 Defendants.)
)
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11
12

13 DEPOSITION OF WAYNE BERRY
14 Taken on behalf of the Defendants C&S Logistics of
15 Hawaii, LLC, C&S Wholesale Grocers, Inc., C&S
16 Acquisitions, LLC, ES3, LLC and Richard Cohen, at the
17 offices of Kobayashi Sugita & Goda, 999 Bishop
18 Street, Suite 2600, Honolulu, Hawaii, on Monday,
19 August 13, 2007, commencing at 11:31 a.m. Pursuant to
20 Notice.

21
22
23
24 Reported by:
25 Priscilla Gonzaga, CSR #127
 Notary Public, State of Hawaii

2

1 APPEARANCES:
2 For the Plaintiff:

3 BERRY.TXT
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 6 Honolulu, Hawaii 96813

7 For the Defendants C&S Logistics of Hawaii, LLC, C&S
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 9 LLC and Richard Cohen:

10 LEX R. SMITH, ESQ.
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1 (Reporter's disclosure is available.)
2 WAYNE BERRY,
3 called as a witness, having been first duly sworn,
4 was examined and testified as follows:
5 EXAMINATION
6 BY MR. SMITH:
7 Q Before we begin, I will put on the record
8 that it is now 11:31 a.m. on August 13. And I have
9 committed, assuming that answers are responsive and
10 that appropriate orders are followed, that I will
11 finish in three hours or less. And I'll do my best

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12 to keep to that.

13 State your full name please.

14 A Wayne Foster Berry.

15 Q What is your date of birth?

16 A November 27, 1955.

17 Q What is your social security number?

18 MR. HOGAN: Objection. There is a federal
19 statute regarding social security numbers in federal
20 cases. And I'm only going to preserve that
21 objection. You can force him to say it. I will only
22 say that I believe that you are entitled to have it
23 but there are protections you must give. And if you
24 proceed, you do so at your own risk.

25 Go ahead and answer the question he's

5

1 asking.

2 MR. SMITH: As before the admonition.

3 MR. HOGAN: Let me put another thing on the
4 record. We believe this is a violation of the Fair
5 Debt Collections Practices Act. Mr. Berry is
6 reserving all his rights against anyone that's at
7 this deposition. There's no waiver.

8 Q (By Mr. Smith) Go ahead.

9 A 567-02-6043.

10 Q Do you have a driver's license in any
11 jurisdiction?

12 A Yes.

13 Q What jurisdiction or jurisdictions?

14 A Hawaii.

15 Q What is the driver's license number?

16 A Can she read it off of this?

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17 Q Fine with me. Read it out loud.
18 A It's too small.
19 Q I see the driver's license.
20 A Sure. You want me to read it first?
21 Q Sure. Let's get the number first.
22 A H00531317.
23 MR. HOGAN: Let the record reflect that Mr.
24 Berry is handing his driver's license to Mr. Smith.
25 Q (By Mr. Smith) I notice that the address on

6

1 your driver license is a post office box and zip code
2 96813. Is that correct?
3 A That's correct.
4 Q What is the street address that you gave the
5 post office when you obtained that post office box?
6 MR. HOGAN: Objection, calls for speculation
7 or assumes facts not in evidence.
8 THE WITNESS: I'm not sure. I don't recall.
9 Q (By Mr. Smith) What is the last street
10 address you had in the State of Hawaii?
11 A I don't recall that either. I think it's
12 probably in the documents you requested.
13 Q Okay. Let's go straight to that. That's a
14 good place for us to begin.
15 You understand that you're here pursuant to
16 a court order today, correct?
17 A Yes.
18 Q Okay. I'm going to have the reporter mark
19 this as Exhibit A to your judgment debtor
20 examination.

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21 MR. HOGAN: I'm going to object to the
22 characterization. The court has called this a
23 deposition.

24 Q (By Mr. Smith) The exhibit that's attached
25 to Exhibit A has a number of items listed. I'd like

7

1 to start with the first one. First of all, have you
2 seen this list before today?

3 A Yes.

4 Q Okay. The first item on the list is state
5 and federal tax returns for the past five years.
6 Have you brought those with you?

7 A Yes.

8 Q May I see them please?

9 A They're in this and it's all numbered and
10 dated.

11 Q Okay. May I see what you've brought. You
12 have only one copy?

13 A Yes.

14 Q I'll have my staff photocopy it so that we
15 can all be looking at the same thing as we look
16 through it.

17 MR. HOGAN: I'm going to object. I don't
18 think you're allowed to copy it unnecessarily. It's
19 covered by the protective order. If you do so, you
20 do so subject to the protective order.

21 MR. SMITH: That's fine. So we'll get those
22 copies back in here momentarily.

23 Q (By Mr. Smith) Have you brought with you
24 bank statements or reports respecting any checking,
25 savings, money market accounts?

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1 A Yes.

2 Q Okay. what about evidence of ownership of
3 mutual funds, have you brought any of those?

4 A I have not.

5 Q You have no mutual funds?

6 A No.

7 Q Stocks, bonds, equity in which you have an
8 interest?

9 A None.

10 Q Financial statements with respect to your
11 financial status?

12 A None.

13 Q You've not prepared one in the last five
14 years?

15 A Not that I can recall.

16 Q Have you applied for a loan in the last five
17 years?

18 A I don't think so.

19 Q Have you applied for a credit card in the
20 last five years?

21 A Not that I can recall.

22 Q Do you have any credit cards?

23 A Only a debit card.

24 Q what is the issuing back of the debit card?

25 A It's in the documents you got. I think it's

9

1 Bank Atlantic.

2 Q Okay. Certificates of deposit?

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3 A None.

4 Q You've had no certificates of deposit in the
5 past five years?

6 A No.

7 Q Titles and registrations of any motor
8 vehicles or recreational vehicles including airplanes
9 and boats that you've had an interest in in the last
10 five years?

11 A None.

12 Q Have you owned any assets in the last five
13 years that required a government license or
14 registration?

15 A Not that I can think of.

16 Q Have you owned any firearms in the last five
17 years?

18 A Yes.

19 Q And did you register those?

20 A Yes.

21 Q And what address did you give when you
22 registered them?

23 A It was a Hawaii Kai address. I can't
24 remember it offhand.

25 Q Do you remember the name of the street?

10

1 A Not offhand, no.

2 Q Did you own the property at the Hawaii Kai
3 address?

4 A No.

5 Q Did you reside at the Hawaii Kai address?

6 A Sometimes.

7 Q So the address was a house?

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8 A Yes.
9 Q When you didn't reside at the Hawaii Kai
10 address, where did you reside?
11 A Either traveling or sometimes stay with Alan
12 Sinesky.
13 Q How do you spell Mr. Sinesky's last name?
14 A I'm not sure.
15 Q Where does Mr. Sinesky reside?
16 A I think it's Ewa Beach.
17 Q Do you have Mr. Sinesky's address?
18 A I don't.
19 Q Have you ever given Mr. Sinesky's address as
20 your address?
21 A I may have.
22 Q When?
23 A I'm not sure. I do remember talking to him
24 once about it. I don't remember the situation but I
25 vaguely recall something about that.

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11

1 Q So you may have at one time used Mr.
2 Sinesky's address?
3 A I think so.
4 Q Who else resides or resided at the Hawaii
5 Kai address that you referred to earlier?
6 A Sally Apgar.
7 Q Who else?
8 A Sometimes her son.
9 Q Who else?
10 A That's all I can think of.
11 Q Was Ms. Apgar the owner of that house?

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12 A I don't believe so.
13 Q Was that house rented?
14 A I think it was.
15 Q Did you ever pay the rent?
16 A At times I think I did.
17 Q And what was the source of funds that the
18 rent -- that your rent payments came from, what
19 account?
20 A Was -- came from Y. Hata.
21 Q Did you pay -- make the rent payments out of
22 a bank account?
23 A No.
24 Q How did the rent that you were paying get
25 from your control to the landlord's control?

12

1 A I cashed the Y. Hata check.
2 Q And paid it in cash then?
3 A I think so.
4 MR. SMITH: Okay. This is the original that
5 you brought with you today. I made copies so that
6 anyone who wants to can refer to a copy. Would you
7 like to see one, Mr. Hogan?
8 MR. HOGAN: No, thank you.
9 Q (By Mr. Smith) And who did you give the cash
10 to when you paid the rent for the Hawaii Kai address
11 in cash? Did you give it to Ms. Apgar or did you
12 give to the landlord or did you mail it somewhere?
13 A I gave it to Ms. Apgar.
14 Q Do you still reside at the Hawaii Kai
15 address?
16 A No.

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17 Q When did you stop residing at the Hawaii Kai
18 address?

19 A I think the last time I was there was in
20 summer of 2006.

21 Q Other than the registration of firearms, did
22 you register any other -- did you use the Hawaii Kai
23 address as your personal address for any other
24 purpose?

25 MR. HOGAN: Object. That misstates his

13

1 testimony.

2 Go ahead and answer the question.

3 THE WITNESS: I may have. But I don't
4 recall.

5 Q (By Mr. Smith) Have you ever resided
6 together with Ms. Apgar at any address other than the
7 Hawaii Kai address that you're referring to?

8 A Yes.

9 Q Where else?

10 A The address is in the documents somewhere,
11 the Florida address.

12 Q Okay. Other than the Florida address in the
13 documents and the Hawaii Kai address that you were
14 discussing, are there any other addresses where you
15 have resided together with Ms. Apgar?

16 A Not that I can recall.

17 Q Is the Hawaii Kai address that you're
18 referring to 7528 Moolea Place?

19 A It might be but I'm not sure.

20 Q Okay. So you wouldn't deny that's the

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21 address in Hawaii Kai where you resided sometimes and

22 Ms. Apgar resided?

23 A I can't deny but I can't confirm it.

24 Q Okay. where are the firearms that you

25 registered in Hawaii currently located?

+

14

1 A I think they're in storage in some boxes.

2 Q what state are they located in?

3 A I think they may be in Florida.

4 Q Do you not know where they're located?

5 A They're in some boxes. And I've got some
6 boxes there and some boxes here.

7 Q where are the boxes that are in the State of
8 Hawaii that you have located?

9 A Mr. Sinesky has them.

10 Q That's Mr. Sinesky's house?

11 A Yes.

12 Q How many boxes do you have there?

13 A I don't know offhand.

14 Q Approximately how many boxes do you have
15 there?

16 A I don't know.

17 Q what is in the boxes that's in Sinesky's
18 house?

19 A I don't know. I haven't looked at them in a
20 very long time.

21 Q when did you pack the boxes that are in Mr.
22 Sinesky's house?

23 A Before the summer of 2006.

24 Q within the past year then?

25 MR. HOGAN: Objection, it does not fairly
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15

1 state his testimony.

2 THE WITNESS: It was sometime before moving
3 things to Florida in the summer of 2006.

4 Q (By Mr. Smith) Okay. So within a year and a
5 half be a fair statement?

6 A No. Some boxes were there for quite a
7 while. Could have been -- I'd say a fair statement
8 within the last eight years.

9 Q Okay. So you don't remember how many boxes
10 and you don't know what's in them?

11 A Not offhand, no.

12 Q Is there more than ten boxes?

13 A I don't know.

14 Q It's possible there's more than a hundred
15 boxes?

16 A I don't know.

17 Q Okay. So there might be more than a hundred
18 boxes with your belongings in them at Mr. Sinesky's
19 house? We just don't know?

20 A I'm not sure what's in them and I don't know
21 how many boxes.

22 Q Okay. You said you also have boxes with
23 your belongings that are located in Florida. Where
24 are those boxes?

25 A They're at the address that's on the

16

1 documents.

2 Q Okay. Do you have any self storage rented

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3 either in Hawaii or Florida?

4 A I don't think I do any more.

5 Q Did you previously have any self storage

6 rented either in Hawaii or in Florida?

7 A Yes.

8 Q Where?

9 A At what time?

10 Q Any time in the last five years.

11 A Sorry. If I can remember correctly, I
12 rented self storage across from that old building
13 across from -- I think that little school, that
14 Kawaiahao School downtown that's over there just off
15 of -- can't remember the name. It's the old white
16 building.

17 I rented a self storage place down by that
18 large facility by Fisher Hawaii just across the
19 street kind of kitty-corner from it. Seems like
20 there was one more. Oh, no.

21 I tried to rent one in Hawaii Kai but --
22 that new one that they built by the restaurant on the
23 main street there but it was too expensive for what I
24 wanted to store.

25 Q What did you store in the self storage

17

1 facility near Kawaiahao School?

2 A Boxes, banker boxes full of stuff. There
3 was, I think, some small amount of furniture, a
4 couple file cabinets, maybe some personal belongings.

5 Q And is it your testimony that you have
6 removed all those items from that self storage
7 facility?

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8 A Yes.

9 Q And where did you take them when you removed
10 them?

11 A I think some of them went to Mr. Sinesky's
12 house and I think some of them went into a garage.
13 And I think a lot of them went to either Goodwill or
14 were thrown away.

15 Q What did you store at the self storage
16 facility by Fisher?

17 A Essentially the same things and/or overflow
18 at various times.

19 Q What did you do with them when you moved out
20 of the self storage facility near Fisher?

21 A Same thing. I think Fisher was actually
22 first. And then I got the second one and eventually
23 after throwing away and shuffling, everything got
24 consolidated into the second one.

25 Q Have you ever rented a self storage facility

18

1 in Florida?

2 A No.

3 Q And it's your testimony that you have no
4 self storage facility in Hawaii presently?

5 A Not that I can recall.

6 Q Has Ms. Apgar rented any self storage
7 facility in Florida to your knowledge?

8 A I don't know.

9 Q Other than Mr. Sinesky, is anyone else in
10 possession of anything that you own?

11 A Possession -- I'm not trying to be evasive

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12 here. You mean like personal things, money like your
13 clients got my software, all that kind of stuff?

14 Q You can skip my client but anybody else
15 that's in possession --

16 A And Guidance and all the other people?

17 Q You can skip the parties to the current
18 lawsuit. But other than that, if somebody else
19 possesses software that you own, I'd like to hear
20 about it.

21 MR. HOGAN: So I'm clear that you possess
22 software that he owns? Does that -- should he put
23 you on the list? I think all the parties' lawyers
24 have copies of software, the files in the cases. I
25 mean can you be specific about your question?

19

1 Q (By Mr. Smith) Yeah. Let's go back to
2 number 1 on Exhibit A. Where in this pile that you
3 provided me, what page numbers contain your state and
4 federal tax returns for the past five years?

5 A It's kind of grouped here to a certain
6 extent.

7 Q Just tell me where I can find it.

8 A If you go back and starting on 35.

9 Q 35, 1040A?

10 A I think they go consecutively throughout the
11 years after that.

12 Q I can't see the date. Am I just missing it?

13 A I don't know.

14 Q So pages 35 and 36 are your tax returns for
15 what year or are your tax returns for what year?

16 A I think the date is down here at the bottom,
Page 16

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17 isn't it, 11/4/02 so this must be a 2002 return. I
18 think they start 2002 through 2006 and it goes
19 sequentially.

20 Q When was the return represented on pages 35
21 and 36 filed?

22 A Recently. I don't remember exactly when.

23 Q During 2007?

24 A Yes.

25 Q Did you get any help preparing the return

20

1 that's reflected in pages 35 and 36?

2 A Only the little question and answer thing in
3 Turbo Tax.

4 Q Was this return, pages 35 and 36 filed
5 within the last month?

6 A I don't recall.

7 Q The date of August 11, 2007 which is above
8 each of the page numbers here, what does that
9 reflect?

10 A That's the date I printed all these and put
11 a number on it.

12 Q Okay. So it was filed sometime prior to
13 August 11, 2007?

14 A Yes.

15 Q But you don't remember how long before?

16 A No.

17 Q Is there a state tax return for the year
18 2002?

19 A I think state followed by -- I'm sorry,
20 federal followed by state all grouped together for

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21 those five years.

22 Q Okay. Okay. So pages 38 and 39 are your
23 state tax returns?

24 A That looks like it.

25 Q Okay.

21

1 A Actually, I think it's 37, 38 and 39 and 40.

2 Q I'm sorry. So your federal return -- okay.

3 I'm sorry, I missed a page.

4 A Unless I shuffled the pages and I tried to
5 be careful with it so.

6 Q Let's go back to 35 and 36 for a minute
7 here. So the year that's reflected by pages 35 and 6
8 is a 12-month period ending November the 4th, 2002,
9 is that correct?

10 A No. I think it's a calendar year filing. I
11 think this is the form number and I think the 11/4/02
12 thing, if I'm not mistaken, I think when -- you know,
13 if you don't see the number on the form lots of
14 times, you can look at the form revision dates at the
15 bottom to figure out where you're at. That's all I
16 was pointing out.

17 Q What I'm trying to understand is what year's
18 income relates to pages 35 and 36 of the document.

19 A If I did it correctly, it goes sequentially
20 as I mentioned to you, 2003 and 2004, 2005, 2006.

21 Q Okay. So pages 35 and 36 reflect your
22 income for the calendar year January 1st, 2003
23 through December 31, 2003?

24 A Which pages again?

25 Q 35 and 36.

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1 A I think that's the 2002 return.

2 Q Okay. So 35 and 36 are January 1, 2002
3 through December 31, 2002?

4 A There's no fiscal years. It's just plain
5 calendar years.

6 Q Okay. What was your gross income during
7 that year?

8 A I didn't have any income that year. I
9 borrowed money.

10 Q Who did you borrow from?

11 A I borrowed some money from Mr. Sinesky and I
12 borrowed some money from Ms. Apgar.

13 Q Did you sign promissory notes to reflect
14 those loans?

15 A No.

16 Q Is there any documentation that reflects
17 those loans?

18 A No, not that I'm aware of.

19 Q Did you -- were the loans made by check?

20 A Not that I recall.

21 Q Were they made by cash?

22 A I'm not sure. That's what I can't recall.

23 Q Okay. Pages 37, 38 and 39 are connected to
24 calendar year 2002, is that right?

25 A I think up through 40. I think it starts

23

1 2003.

2 Q Okay. So 37 through 40 also reflects that

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3 you had no income during that year whatsoever?

4 A Yes.

5 Q Were you working in 2002?

6 A No.

7 Q Did you attempt to find work in 2002?

8 A Yes.

9 Q Where did you look for work?

10 A Part of 2002, part of it was negotiating the
11 Y. Hata contract which started in May of 2003. That
12 took about a year and a half to two years to
13 negotiate.

14 Q Anything else you were doing in 2002 besides
15 negotiating with Y. Hata?

16 A Trying to recall. There were a variety of
17 small projects, computer programming projects I
18 looked at. I did do some work, as I recall, on some
19 things but it wasn't billable work. I just let it
20 go. And some of the projects were just not -- there
21 were things that people wanted to start. It didn't
22 turn into anything that brought in income.

23 Q About how many hours of programming did you
24 engage in where you just let it go?

25 A I wouldn't even have a guess.

24

1 Q Okay. Pages 41 through 45 are your federal
2 tax return for calendar year 2003, correct?

3 A Yes.

4 Q And what was your gross income in the year
5 2003?

6 A Looks like \$67,200.

7 Q With did that come from?

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8 A It came from Y. Hata.
9 Q A hundred percent of that came from Y. Hata?
10 A I think so.
11 Q Where would we go to check? Have you
12 produced the records that would reflect that?
13 A For that number in here?
14 Q Right.
15 A I don't think it's in here. I think you can
16 probably look at the Y. Hata contract. That might do
17 it.
18 Q Okay. And we have a copy of the Y. Hata
19 contract?
20 A Yeah. See if it's reasonable.
21 Q To your knowledge, did you have any other
22 income in calendar year 2003 besides what you
23 received from Y. Hata?
24 A Not that I can recall.
25 Q Let's go to page 50.

25

1 A Okay.
2 Q What was your gross income in 2004?
3 A \$120,800.
4 Q What were the sources of your income in
5 2004?
6 A Again, it was Y. Hata.
7 Q Did you receive any funds from any source
8 other than Y. Hata in 2004?
9 A I don't recall any. There was that
10 settlement with Hawaiian Express and I don't remember
11 how Turbo Tax picks that up. But there's 52,500 in

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12 here somewhere and it picks it up, you know. I don't
13 know where it plops it on the form but it was in
14 there in 2004, 2005. I don't recall. That would be
15 the only other source of those years.

16 Q From 2004 up to the present date, have you
17 received any funds from any source whatsoever other
18 than Y. Hata and the settlement with Hawaiian
19 Express?

20 A No, not that I can recall.

21 Q Page 55 is your tax return for 2005?

22 A Okay.

23 Q Is that correct?

24 A Yes.

25 Q And that shows -- line 21 shows \$52,500.

26

1 A Yes.

2 Q Wasn't your settlement with Y. Hata
3 \$100,000?

4 A I think -- settlement with who?

5 Q I apologize. With Hawaiian Express.

6 A I think it was 105. It was double this.

7 Q And why is that full amount not listed on
8 your tax return?

9 A Because it was on a contingency. This was
10 the portion I received.

11 Q Okay. When were the federal tax returns that
12 begins with page 55 filed?

13 A I don't recall exactly.

14 Q Was it filed the same time as all the others
15 that you've produced?

16 A More than likely, yes.

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17 Q And that would be sometime in 2007?
18 A Yes.
19 Q And you can't remember whether it was within
20 the last month or not?
21 A No.
22 Q Are you renting or do you own a home in
23 Florida now?
24 A Just rent.
25 Q And who pays the rent on your residence in

27

1 Florida?
2 A To who, the owner of the home or --
3 Q well, I don't know. Do you pay rent for the
4 place you live now?
5 A Yes. I pay part of the rent.
6 Q How much rent do you pay?
7 A About somewhere between a thousand and 1100
8 a month.
9 Q And to whom do you pay your rent?
10 A To Sally Apgar.
11 Q Do you pay by check?
12 A Yes.
13 Q what bank is the check drawn on?
14 A The Bank Atlantic. You've got the documents
15 on here.
16 Q How long have you had the account with Bank
17 Atlantic?
18 A I got it shortly after moving to Florida.
19 Q Did you have any account -- any bank
20 accounts prior to the Bank Atlantic account?

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21 MR. HOGAN: Objection, vague as to time.

22 Q (By Mr. Smith) In the five years prior to
23 moving to Florida.

24 A Not -- yes.

25 Q where?

28

1 A It's in here. Scottrade.

2 Q Do you still have an account with Scottrade?

3 A Yes.

4 Q And where -- is that a Scottrade office in
5 Hawaii?

6 A Yes.

7 Q Any other accounts that you had in the last
8 five years other than Scottrade and Bank Atlantic?

9 A Yes. They're also in here. There's an
10 account at optionsxpress.

11 Q where?

12 A Optionsxpress. There's no E in that.

13 Q Okay.

14 A And there's an account at E Trade. There's
15 an E in that.

16 Q Okay. Well, that takes us right to item 2
17 on the list. Can you show me where the account
18 statements are that you have produced?

19 A I grabbed what I could find and I think if
20 you go to page 28, it's where they start.

21 Q So page 28 as it relates to optionsxpress,
22 correct?

23 A Yes.

24 Q And it refers to Wayne's account overview as
25 of 8/11/2007, correct?

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1 A Yes.

2 Q And it reflects that you have -- your
3 account has a value of \$5,032?

4 A Correct.

5 Q Have you made any deposits into that account
6 in the last year?

7 A Yes.

8 Q How many?

9 A I don't know offhand.

10 Q Have you made any withdrawals from that
11 account in the last year?

12 A I may have but I don't think so.

13 Q What is page 29?

14 A That's the Scottrade account I told you
15 about. These people -- option stuff they don't send
16 statements. They don't have the record type
17 printing. And Scottrade I lost my password. I
18 couldn't even do a current screen print. So I
19 photocopied the books so you could see what it was.

20 Q What is your -- the balance on your
21 Scottrade account?

22 A I haven't a clue.

23 Q Is it more or less than \$20,000?

24 A I haven't a clue. I honestly don't know.

25 Q So is it more or less than \$100,000?

30

1 A I don't think I have \$100,000 so no. It's
2 got to be less than that.

BERRY.TXT

3 Q So less than 100,000 but you honestly don't
4 know whether it's more or less than 20,000?

5 A I don't think it's 20,000. It's less than
6 that unless someone's been very nice to me that I
7 don't know about.

8 MR. HOGAN: Scott.

9 THE WITNESS: Yeah, Mr. Scott maybe.

10 Q (By Mr. Smith) The address on Keahole Street
11 that's reflected on your check, where is that?

12 A That's in Hawaii Kai.

13 Q And is that a home in Hawaii Kai?

14 A It's that postal service. It's a street
15 address.

16 Q It's a mail drop in Hawaii Kai Shopping
17 Center?

18 A It was. They're out of business.

19 Q Okay. And they charged you a monthly fee
20 for the use of that address, right?

21 A Yes.

22 Q Who paid that fee?

23 A I did.

24 Q And what was the source of the funds? Did
25 you pay with a check?

⊕

31

1 A Not sure but I think I always paid them
2 cash.

3 Q Did you give them a credit card number?

4 A I don't think so.

5 Q By the way, when I asked you if you had any
6 credit cards, you said no, only a debit card. Have
7 you had any credit cards in the last five years?

BERRY.TXT

8 A Not that I can recall. I think the last
9 credit card I may have had was in maybe 2001.

10 Q Who was the issuing bank of that credit
11 card?

12 A I don't know. A long time ago.

13 Q And why does the year 2001 occur to you as
14 the time when you last had a credit card?

15 A Just it's -- I can just recall the
16 approximate date.

17 Q But you can't remember -- was it a bank
18 that's in Hawaii?

19 A No.

20 Q Were you a resident of Hawaii at that time?

21 A Yes.

22 Q What is your balance in the E Trade account
23 reflected on page 30?

24 A \$5000.96.

25 Q Page 31 reflects a Bank Atlantic account

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1 with \$38,878 in it?

2 A Yes.

3 Q What is the source of the funds that is in
4 the Bank Atlantic account?

5 A That came from Y. Hata.

6 Q Has any money got into the Bank Atlantic
7 account from any source other than Y. Hata?

8 A Not that I can recall. I don't think so.

9 Q And this account reflected on page 31 is the
10 source from which you pay your rent, is that right?

11 A During this last year? I'm trying --

BERRY.TXT

12 Q I'm happy to narrow the question to during
13 this last year.

14 A Yes.

15 Q What source did you use to pay your rent
16 before this past year?

17 A Some of -- as we're talking, I remember more
18 as we talk. Some of this may have come from the
19 Scottrade account. That's an older account. It goes
20 back away further. I'm trying to remember when I set
21 that up.

22 Q Did you make any payments to Sally Apgar out
23 of the Scottrade account?

24 A I believe I did.

25 Q What was the reason for those payments?

33

1 A Rent payment, repayment of loan, things like
2 that.

3 Q How much has Sally Apgar loaned you?

4 A I don't know.

5 Q Well, you indicated that you've made some
6 repayments of the loan from her with your Scottrade
7 account. So --

8 A I said I may have. I'm not completely sure
9 and I'm not exactly sure of the balances or --

10 Q Does Ms. Apgar know how much you owe her?

11 MR. HOGAN: Objection, calls for
12 speculation.

13 Q (By Mr. Smith) You may answer.

14 A I don't know.

15 MR. SMITH: I want to state for the record
16 that the documents that you have provided in

BERRY.TXT

17 connection with your accounts are incomplete and do
18 not meet the requirements of the court's order
19 entered May 30, 2007. And that I'm reserving all
20 rights related to the lack of a complete compliance
21 under the documents.

22 MR. HOGAN: You know, counsel, why don't you
23 state for the record what you think is missing rather
24 than just play this little game so that you can keep
25 Mr. Berry in your little judgment collection

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1 nightmare for the rest of his life. Why don't you
2 just put on the record what you think is missing if
3 you think anything is missing.

4 MR. SMITH: That's a very fair request
5 although you don't need to be quite so grouchy about
6 it.

7 MR. HOGAN: Well, your motivation is quite
8 clear, Mr. Smith, that your motivation has something
9 to do with some personal longing for Sally Apgar that
10 you seem to have.

11 MR. SMITH: The documents that have been
12 produced -- the order says all bank statements or
13 reports with respect to checking accounts, savings
14 accounts, money market accounts or other bank
15 accounts of any nature in your name to which you are
16 signatory for the past five years. These records are
17 highly incomplete as they relate -- they contain far
18 less than all of those documents. I have -- there
19 are a few pages from those accounts and he has
20 identified the accounts. And I'm just stating that

BERRY.TXT

21 they're not complete.

22 MR. HOGAN: And have you asked him whether
23 he has possession of any of the documents? I mean
24 isn't that usually the question? Do ever -- did you
25 have them, did you fail to bring them?

†

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1 It's pretty clear, Mr. Smith, that this is
2 simply an attempt to bushwhack Mr. Berry. At least
3 ask him the question about whether or not he's
4 complied with the request and whether he -- and what
5 efforts he made to comply so you have a record.

6 Q (By Mr. Smith) Other than the accounts that
7 you have identified at pages 28 through 34, so what
8 is that, six or seven pages, do you have any other
9 accounts relating to or within the description
10 contained in paragraph 2 which I'll read to you.
11 "All bank statements or reports with respect to a
12 checking account, savings account, money market
13 account or other bank account of any nature in your
14 name or to which you are signatory for the past five
15 years."

16 A This is all I've got. You've got something
17 from each of the accounts. And I grabbed whatever
18 papers I had from each of those accounts.

19 Q Okay. So my question is are there any other
20 accounts for the past five years?

21 A Not that I'm aware of. Not that I could
22 find. I think that's it.

23 Q And you have -- you possess no records
24 relating to any of those accounts other than the six
25 pages that you've brought here today?

BERRY.TXT

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1 A That's all I could find. And I had to --
2 like I say, three options accounts, they don't even
3 send monthly statements or anything. So I gave you a
4 screen print off the internet.

5 Q Okay. Number 8 on the list. Let me just
6 confirm. Items 3, 4, 5, 6 and 7, it's your testimony
7 that you have nothing?

8 A Yes.

9 Q Number 8 on the list, deeds, contracts or
10 other evidence of ownership in real property in which
11 you currently hold or have held an interest in the
12 past five years.

13 A None.

14 Q Number 9, life insurance.

15 A None.

16 Q All documentation pertaining to any accounts
17 receivable or notes receivable from any person or
18 entity to you.

19 A I don't think anyone owes me any money and I
20 don't have any documents to it. To your clients, Mr.
21 Hosoda, Dillon and Noah owe me money but I don't have
22 any documents that state that.

23 Q So you're not aware of anyone who owes you
24 any money?

25 MR. HOGAN: Objection, that misstates his

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1 testimony.

2 THE WITNESS: I think I just --

BERRY.TXT

3 Q (By Mr. Smith) So you identified Dillon and
4 Noah?

5 A Yes.

6 Q Anybody else who to your understanding owes
7 you money?

8 MR. HOGAN: I'm going to object. Other than
9 the defendants in this case that may be judgment
10 debtors?

11 Q (By Mr. Smith) I'll let you answer. Whoever
12 in the word you think owes you money.

13 MR. HOGAN: Objection, vague as to what the
14 term "owes" means.

15 THE WITNESS: My personal definition of
16 owing me money, it's a long list. But as far as
17 something I think you're looking for here where you
18 could go take the document and collect money from
19 someone to satisfy a judgment, no. Only the stuff
20 you're aware of in the court cases and things like
21 that. I don't think even Dillon and Noah, I don't
22 think you could collect from them because there's no
23 written documentation that's says that they owe the
24 money.

25 Q (By Mr. Smith) Actually, I'm asking for you

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1 to identify anybody who you think you have a valid
2 claim against.

3 A This is three hours.

4 MR. HOGAN: I'm going to object. It calls
5 for a legal conclusion. Why don't you ask me the
6 question. You're going to ask me a question as it
7 relates to litigation and ongoing litigation, I mean

BERRY.TXT

8 it's just -- you've done this before. I believe this
9 is creditor harassment and Fair Debt Collection
10 Practices Act is very well in place in this
11 deposition.

12 MR. SMITH: You may answer.

13 THE WITNESS: All the parties in this
14 lawsuit.

15 MR. SMITH: Okay.

16 THE WITNESS: And I believe when the appeals
17 are done, they will all owe me money.

18 MR. SMITH: Okay.

19 THE WITNESS: I think when other issues are
20 done, I think just about all the attorneys, maybe
21 with one or two exceptions, will owe me money.

22 Q (By Mr. Smith) All the attorneys in the suit
23 that we're here on today?

24 A In all the suits we're here on today. Okay?

25 Q All the attorneys in any suit that --

♀

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1 A You've got a eight year history here, okay?

2 Q I know you're talking about me. I'm just
3 trying to understand if you're talking about only
4 this case or more than this case.

5 A I'm talking about the first case, the second
6 case and things to come. Okay. Let's leave it at
7 that.

8 Q Okay. So all the attorneys that have
9 opposed your claims in any case you filed up to
10 today?

11 A Oh, no. All the attorneys who advised their